IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.5054 of 2004

V.B. Hajela ..Petitioner

vs

Union of India and ors...Respondents

Mr.Romesh Kumar Ramamurthy with Mr.Saikumar Ramamurthy for petitioner

Mr.S.S.Parkar for respondents

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated l5.l2.2004

P.C:

Rule. The learned counsel for respondents waive service. By consent rule is made returnable forthwith. Heard advocates.

2. This petition is directed against the judgment and order passed by the Central Administrative Tribunal, Mumbai Bench dated 27.2.2003 in Original Application No. 3l5 of l999. By this order the tribunal has dismissed the O.A filed by the petitioner on the ground that the said application is barred by limitation and suffers from multiple reliefs. The facts and circumstances leading to this petition are stated hereinbelow.

3. The petitioner was employed as Inspection Officer(Textiles) in the office of the Director of Inspection and has retired from service on superannuation on 28.2.l99l at the age of 58 years and is presently aged 7l years. While the petitioner was working at Kanpur he was served with a chargesheet cum memorandum dated 27.2.l987 alleging that the petitioner in l984 while functioning as Inspecting Officer(Textiles) at Kanpur accepted sub-standard Tarpaulin in inspection offered by M/s India Proofing and General Industries Kanpur and thereby showed undue favour to the said firm. Thereafter an inquiry was held and the Enquiry Officer submitted his report holding that the charges were proved against the petitioner. The President of India passed an order dated 26.5.l988 and imposed penalty of compulsory retirement on the petitioner. Consequent to the said penalty being imposed the petitioner was relieved from the service with effect from 27.5.l988.

3. The petitioner challenged the said order in Original Application No. 604 of l988 before the Central Administrative Tribunal at Mumbai. The said original application was allowed by the

tribunal and order of compulsory retirement was set aside vide judgment and order dated 8.8.l99l. The tribunal, however, clarified that the order of setting aside of the penalty of compulsory retirement will not preclude the disciplinary authority from continuing the said inquiry proceedings in accordance with law from the stage of supply of enquiry officer's report to the petitioner. Thereafter the President of India in view of the judgment and order dated 8.8.l99l of the tribunal passed order dated l9.2.l992 and accorded sanction to proceed with the disciplinary proceedings against the petitioner . By the said order it was directed that the petitioner shall be deemed to have been put under suspension from 27.5.l988 to 28.2.l99l. The petitioner preferred Original Application No. 37l of l992 challenging the order dated l9.2.l992 passed by the President of India treating the period from 27.5.l988 to 28.2.l99l as deemed suspension. This original application was allowed by the tribunal by judgment and order dated 5.8.l992. In appeal the order of the tribunal was set aside by the Supreme Court and the order of deemed suspension dated l9.2.l992 passed by the President of India was upheld by the Supreme Court. Thereafter on the basis of the

inquiry officer's report the President of India passed order dated l.5.l997 imposing penalty of l0% cut in pension payable to the petitioner for a period of 2 years and alongwith the said order dated l.5.l997 the advice given by the UPSC was also forwarded to the petitioner. The petitioner thereafter received another memorandum dated l.5.l997 from the President of India asking him to show cause why the entire period of deemed suspension from 27.5.l990 to 28.8.l99l be not treated as not spent on duty for all purposes. By an order dated l3.l0.l998 passed by the President of India the entire period of deemed suspension was treated as not spent on duty for all purposes.

4. The petitioner preferred Original Application No.3l5 of l997 challenging the disciplinary proceedings initiated in pursuance to the chargesheet dated 27.2.l987 as well as penalty dated l.5.l997 as also order dated l3.l0.l998 treating the period of deemed suspension as not spent on duty. To the said original application the respondents filed reply and the petitioner has filed his rejoinder and the respondents filed their sur-rejoinder. By the impugned judgment and order dated 27.2.2003 the tribunal dismissed the said

original application filed by the petitioner on the ground that the challenge to the impugned penalty order dated l.5.l997 imposing l0% cut in pension was barred by limitation and even other relief cannot be looked into as the original application suffers from multiple reliefs.

5. Mr. Marne, learned counsel appearing for the petitioner submitted that the respondents did not raise the plea of limitation in the written statement nor was it argued at the time of final hearing on behalf of the respondents before the tribunal. The tribunal cannot on its own consider the question of limitation after the hearing is over and without notice to the parties and reject the original application for part of the relief on that ground. He urged that the reliefs which were sought by the petitioner were consequential in nature and, the petitioner has approached the tribunal after receipt of the order dated l3.l0.l998 treating the period of deemed suspension as not spent on duty and, therefore, the tribunal had clearly erred in holding that the challenge to the order dated l.5.l997 was barred by limitation.

6. We find considerable substance in the

submission of Mr. Marne. All the orders which were challenged before the tribunal were passed under the same chargesheet and, therefore the tribunal was not right in holding that the challenge to the penalty order dated l.5.l997 was barred by limitation. If the reasoning of the tribunal is to be accepted then the petitioner will have to file two separate original applications -one for challenging the penalty order dated l.5.l997 and the other for challenging the order dated l3.5.l998 whereby the suspension order was treated as not spent on duty. The order dated l3.l0.l998 is directly flowing from the disciplinary proceedings commenced under the chargesheet dated 27.2.l987 and the tribunal was not right in assuming that there were two separate cause of actions. The reliefs sought by the petitioner flow from only one cause of action. The original application was filed within six months from the date of receipt of the order dated l3.l0.l998 and, therefore, the rejection on the ground of the challenge to the penalty order dated l.5.l997 being time barred cannot be sustained.

7. In the present case there were three previous litigations in respect of the same disciplinary

proceedings, two in the Central Administrative Tribunal and one before the Supreme Court. The chargesheet in question was issued in l987 and the first penalty of compulsory retirement was issued in l988 and the said penalty was set aside by the tribunal by judgement and order dated 8.8.l99l in Original Application No.604 of l988. The subsequent penalty passed in the matter is six years after the judgement during which period the petitioner's challenge regarding placing him under deemed suspension was initially upheld by the Central Administrative Tribunal, Mumbai Bench, in Original Application No.32l of l992 which was set aside by the Supreme Court in l996. The learned counsel for the petitioner submits and, in our opinion rightly, that the entire history of litigation would clearly indicate that the petitioner was diligently pursuing his remedies and even in the present case the petitioner has approached the court of law within the period of limitation. In the above circumstances the tribunal was clearly in error in holding that the claim against the penalty of l0% cut is barred by limitation and the application suffers from multiple reliefs. The impugned order dated 27.2.2003 is therefore quashed and set aside. The

matter is remitted back to the tribunal for deciding the Original Application No.3l5 of l999 afresh on its own merits in accordance with law. The tribunal is directed to decide the application within six months. Rule is made absolute accordingly with no order as to costs.